

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. INU-99-3
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ORDER DENYING MOTION TO STRIKE

(Issued December 22, 1999)

On November 5, 1999, South Slope Cooperative Telephone Company, Inc. (South Slope), filed a motion to strike certain statements contained in the second paragraph on page 5 of the initial brief filed in this docket by U S WEST Communications, Inc. (U S West). South Slope argues that the statements in U S West's brief are not based on evidence in the record and contain factual assertions that South Slope had no opportunity to contest.

The U S West statements at issue refer to negotiations between U S West and South Slope regarding an interconnection agreement. U S West sought an interconnection agreement with South Slope to permit U S West to enter South Slope's service territory as a competitive local exchange carrier, or CLEC. (Transcript page 166.) According to South Slope, U S West describes those negotiations in greater detail in its brief than was previously included in the record in this case.

On November 18, 1999, U S West filed a reply to South Slope's motion to strike. U S West argues that the statements at issue are adequately supported by

testimony in the record. That testimony, by South Slope's witness, indicated that South Slope and U S West had entered into an interconnection agreement in which U S West is the CLEC and South Slope is the incumbent local exchange carrier. U S West also argues that the facts stated in its brief are accurate, as shown by South Slope's failure to allege any mis-statement or inaccuracy.

On November 23, 1999, South Slope filed a response to U S West's reply. South Slope argues that U S West is unable to provide record citations to support the factual assertions made in its brief and that "South Slope is particularly offended and prejudiced" by U S West's reply, which includes further unsupported statements of fact.

The Board will deny the motion to strike. It is true that U S West's brief goes into greater detail than the testimony in this case will support, but that fact by itself does not require that the Board strike the information from U S West's brief. The information U S West is offering comes from another Utilities Board proceeding, Docket No. RET-97-1. If necessary, the Board could take official notice of the record in that proceeding as a part of this record, pursuant to IOWA ADMIN. CODE 199-7.7(10) (1999) ("Any matter contained in a report or other document on file with the board may be offered in evidence merely by specifying the report, document, or other file containing the matter so offered"). However, the Board finds it is unnecessary to take official notice of the record in Docket No. RET-97-1 in this

matter because the information at issue is unlikely to be significant to the Board's decision in this docket.

U S West's point with respect to this information appears to be just this: U S West and South Slope are parties to an interconnection agreement in which U S West is the CLEC and that South Slope would not enter into such an agreement until the Board had first determined South Slope's rural exemption status. The record in Docket No. RET-97-1 speaks for itself in that respect, but even if U S West's assertions are taken as true, they have no bearing on any of the factors the Board is to consider pursuant to IOWA CODE § 476.1D (1999).

Moreover, South Slope's point, as described in its November 23, 1999, response, relates to the barriers South Slope encountered when trying to enter U S West's service territory. Clearly, allegations that U S West had difficulties entering South Slope's territory, based on South Slope's potential rural exemption status, have little bearing on the reverse situation, when U S West is not entitled to assert rural exemption.

This is not to say the information is totally irrelevant. If nothing else, it serves to more fully explain certain statements made by South Slope in its Statement of Position, filed in this docket on September 13, 1999. As such, the information is minimally relevant, if only to show that the issues decided by the Board in Docket No. RET-97-1 are not significant in this proceeding. For this reason, the Board will not grant the motion to strike.

IT IS THEREFORE ORDERED:

The motion to strike filed by South Slope Cooperative Telephone Company, Inc., on November 5, 1999, is denied.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 22nd day of December, 1999.